IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 4876 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? :

GHATLODIA MAHILA UDYOG SAHAKARI MANDLI LTD.
Versus
STATE OF GUJARAT

Appearance:
1. First Appeal No. 4876 of 2001
MR. SHIRISH JOSHI FOR MR GM JOSHI for Petitioner No. 1
MS. KATHA GAJJAR, AGP, for Respondent No. 1-2

CORAM : MR.JUSTICE K.M.MEHTA

Date of decision: 08/05/2002

ORAL JUDGEMENT

1. Ghatlodia Mahila Udyog Sahkari Mandli Ltd.-appellant (original plaintiff) has filed this appeal

against the judgement and decree dated 30.10.2001 passed by the City Civil Judge, Ahmedabad, in Civil Suit No. 6036 of 1990 filed by the plaintiff. The learned judge by his impugned judgement was pleased to dismiss the suit filed by the plaintiff.

2. The facts giving rise to this appeal are as under:

2.1 The plaintiff filed Civil Suit No. 6036 of 1990 for declaration and permanent injunction that the action of the defendants of inviting tenders by advertisement in the Gujarat Samachar dated 16.12.1990 in respect of laundry work in Civil Hospital is illegal, unauthorised and against the policy of the Government and also mala fide. The plaintiff further prayed that the defendants may be restrained from proceedings further and the plaintiff may not be restrained in their laundry work allotted to the plaintiff.

2.2 The plaintiff has stated that the plaintiff is a Co-operative Society registered under the Gujarat Co-operative Societies Act. It was also averred that the plaintiff society has been formed with the object of encouraging women and to provide financial support to such women, such society has been formed. It was averred that the defendant Government has by circular dated 16.3.1979 decided and formed a policy that the Government and semi-Government bodies and also, jail, hospitals, panchayats and such other institution shall purchase the stores and also give such work without inviting tenders to such recognised women institution or the society. It was averred that such institution formed by the women is registered and recognised by the Cottage Industry and as per the Government policy the stores or such ancillary services will be provided by such recognised institution only and the Government, semi Government bodies and Corporation shall purchase the items of stores or such services from such institution without tender. It was averred that pursuant to such policy the plaintiff society has been recognised by the Cottage Industry and is allotted the work of laundry of Civil Hospital. It was averred that the plaintiff society has been performing their work satisfactorily. It was averred that the bill for the said laundry is required to be sent to Gujarat Mahila Arthik Vikas Nigam Ltd. which is also Government Institution and they in turn will send the bill to the Civil Hospital and recover the amount for and on behalf of the plaintiff institution.

2.3 From the facts it appears that defendant No. 2

Superintendent of the Civil Hospital stated that defendant No. 2 has issued advertisement in daily Gujarat Samachar dated 16.12.1990 inviting tenders for the work of laundry at the Civil Hospital. It was averred that the plaintiff had made representation to the defendants. It was also averred that as per Government Circular dated 16.3.1979 the plaintiff society is the only institution which is allotted the work and no other institution is given the laundry work of the Civil Hospital. In view of the same the aforesaid suit was filed.

2.4 The defendant has filed reply to the Notice of Motion as well as to the suit. It was contended inter alia that the plaintiff was allotted the laundry work of Civil Hospital by contract upto 31.10.1990 and the said contract was further extended for two months. It was averred that thereafter representation was made to the Government that other such institutions similarly situated may provide services and may carry out this laundry work at more competitive rates and therefore advertisement in the daily Gujarat Samachar was given inviting tender from other recognised institutions. It was averred that Arthik Pachhat Mahila Vikas Sanstha which was also recognised institution and also registered Co-operative Society under the Co-operative Societies Act had filled in the tender. It was further averred that there is no mala fide in inviting the said tender from similarly situated other recognised Institutions for the same work which can be availed at more competitive rates. It was stated that the defendant No. 2 has right to invite the said tender and members of the Tender Committee had also found that more competitive rates are quoted by the others. It is averred that as the tenders are invited from such Institution similarly situated like the plaintiff and it is to be decided by the Committee. There is no question of any arbitrary exercise of power by the defendant No. 2 Superintendent of the Civil Hospital. It was averred that the Government has issued a Circular dated 16.3.1979 regarding policy of the Government to encourage recognised Institution of the women and to encourage them for economically self reliance. It was contended that though it is a policy there is no prohibition that the Government or the Government Corporation or the Civil Hospital can give work only to such institution recognised by the Cottage Industry and cannot invite tenders from other similarly situated institution. It was further contended that the suit deserves to be dismissed as no one can claim monopoly or claim as a matter of right that pursuant to the policy the work could be given to such institution

only without considering the rates offered by other similarly situated institution.

2.5 Oral and documentary evidence was led by the parties. Thereafter, the learned judge has held as under:

1. The learned judge has held that the plaintiff is a registered Co-operative Society recognised by the Department of Cottage and Industries. The plaintiff has failed to prove that only the plaintiff has right to work in Civil Hospital regarding laundry work.

2. It was proved that as per the Government Circular dated 16.3.1989 the defendant could make purchase from such recognised institutions / society without inviting tender.

3 The plaintiff failed to prove that the tenders invited by the defendants for 1991 by giving advertisement in the newspaper is arbitrary and illegal.

4. The plaintiff has failed to prove that the defendants have no right to invite the tenders in view of the Circular dated 16.3.1989.

5. In view of the same, no rights of the plaintiff are violated.

2.6 Being aggrieved and dissatisfied with the aforesaid decision of the learned City Civil Judge, Ahmedabad, the appellant has filed this First Appeal before this court. Mr. Shirish Joshi, learned advocate appeared on behalf of the appellant. He has invited my attention to the Circular of the Government dated 8.3.1979 by which preference is given to such women society. He has also invited my attention to the Circular of the Government dated 23.9.1997 and also the last circular of the Government dated 4.9.2001 by which the Government has decided to cancel the earlier circular dated 8.3.1979 and adhere to the circular dated 23.9.1997. He submitted that the policy of the Government is clearly contrary and also violative of Article 15(4) of the Constitution of India which provides that nothing in this Article or in clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of socially and educationally backward classes of citizens or for the Scheduled Cases and Scheduled Tribes. He submitted that

the policy in question which permits the Government to have open tender will ultimately jeopardize the working women society and therefore the same should be quashed and set aside and the Government be directed to further adhere to the Circular dated 8.3.1979. The learned counsel for the petitioner has invited my attention to Exh. 79 list produced by the defendant after the evidence of the plaintiff is over by which the Government decided to produce new purchase policy at Exh. 83 Resolution, Exh. 82 Resolution dated 16.3.1989, Exh. 81 Resolution dated 8.3.1989, Exh. 84 Resolution dated 4.9.2001. He submitted that in view of the same the rights of the plaintiff are violated and the plaintiff had no opportunity to meet with the contention in this behalf because at that time the oral evidence on behalf of the plaintiff was over. He has invited my attention to the judgement of the Hon'ble Supreme Court in the case of OM PRAKASH GUPTA VS. RANBIR B. GOYAL reported in (2002) 2 SCC 256 where the Hon'ble Supreme Court has held that in subsequent events the court has power to take note of and mould relief as appropriate but only if three conditions are satisfied: (i) relief as originally claimed has become inappropriate or impossible to grant; (ii) taking note of such events or changed circumstances would lead to early end of the litigation and would result in complete justice being done and (iii) subsequent events are brought to notice of court promptly and in accordance with rules of procedure to ensure that opposite party is not taken by surprise.

2.7 The learned counsel for the plaintiff submitted that in this case the Civil Court by appreciating the documents acted contrary to and inconsistent with the said judgement of the Hon'ble Supreme Court.

3. On the other hand Ms. Gajjar, learned A.G.P. for the respondents stated that initially Government has formulated a policy by which women were given preference. However, the Government decided that if the work is more than Rs. 2 lakhs the Government decided to have open tender policy because then only the Government may get competitive rates and if the Government gets competitive rates then the rates may be lowered and that may save public revenue in this behalf. Only with this sole object the Government decided to take a policy decision that if the amount is more than Rs. 2 lakhs the Government may call for open tender.

3.1 The learned counsel for the respondents submitted that this court may not interfere or adjudicate upon the Government matter. The question of policy is essentially

for the State to decide. Such policy depends upon a number of circumstances and it is neither desirable nor advisable for the courts to direct or sermonize the Government to adopt a particular policy which the court deems fit and proper. In short, the court cannot be propelled into the unchartered ocean of Government policy. In support of the aforesaid submission, the learned counsel for the respondent has relied on the judgement of the Hon'ble Supreme Court in the case of BENNETT COLEMAN VS. UNION OF INDIA reported in AIR 1973 SC 106. The learned counsel for the respondent has submitted that as to whether the Government should give preference to working women or not and if the service provided for is more than Rs. 2 lakhs, whether the Government should invite open tender or not, is a policy question for the Government. She submitted that there are several decisions in this behalf. She has referred to Law of Writs by V.G. Ramachandran, 5th Edition, on pages 345-351, Chapter 10, para 11 relating to "policy matters". Over and above, she has stated that the last judgement of the Hon'ble Supreme Court in the case of BALCO EMPLOYEES UNION (REGD. VS. UNION OF INDIA reported in AIR 2002 SC 350. The learned counsel for the respondent has relied on the affidavit-in-reply of Dr. Anil Chadha, Medical Superintendent, Civil Hospital in this behalf. From the affidavit in reply, the learned counsel for the respondent submitted that as per Government Resolution dated 23.9.1997, Hospital has to issue tender if the amount of work exceeds Rs. 2 lakhs and looking to that resolution the original classification of such direction has been cancelled and fresh classification has been made in which categories such as A, B have been created and the applicant falls in category B and further on page 6 monetary limit has been shown. According to the said Resolution if purchase is not more than Rs. 2 lakhs, the Department can purchase without tender within the limit of Rs. 2 lakhs and if the purchase exceeds limit of Rs. 2 lakhs, Department/Institution has to issue tender in public. The learned counsel for the respondent has further submitted that the Resolution dated 4.9.2001 came into force during the pendency of the suit and hence it is very much applicable appellant and the City Civil Court has rightly taken into consideration that resolution dated 23.9.1997 and resolution dated 4.9.2001 is applicable to the present case.

3.2 The learned counsel for the respondent has further pointed out from the affidavit in reply that when the contract was given first to the applicant-appellant 0.35 paise per cloth was the fixed charge for all type of

clothes and after that bifurcation is made, different charges were fixed for big clothes and small clothes and subsequently, it was enhanced from 0.60 paise for big clothes and 0.40 paise for small clothes to Rs. 3.50 paise for big clothes and Rs. 2.50 paise for small clothes in the year 1988. The learned counsel has also produced comparative statement of the tender made by Civil Hospital, Ahmedabad on 21.11.2001 which clearly showed how the charges of the appellant are much higher than others leading to an unnecessary waste of public money. The comparative statement of the tender showed that the rates mentioned by the appellant in comparison to other all institution and individuals are very much higher. Hence if stay is granted to the appellant/applicant, the Department / State has to pay more amount for the services and it is very much clear that this amount is being paid from the Government exchequer. Therefore, the learned counsel for the respondent submitted that stay should not be granted.

3.3 The learned counsel for the respondent submitted that Civil Hospital has received tenders from ten persons in which lowest rate of washing per cloth is 0.90 paise for unpressed clothes and Rs. 1/- per cloth for washing and pressing. Hence the loss being incurred by the Civil Hospital is immense. In view of the same, injunction should not be granted.

4. I have given my anxious consideration in this behalf. However with a view to see that the right of plaintiff are not jeopardised and also Government rights are protected, the following orders are passed without prejudice to both the parties without adjudicating anything in the matter and the same will be in the interest of justice. The matter is remanded to the City Civil Court at Ahmedabad.

i The judgement and decree dated 30.10.2001 passed by the City Civil Court, Ahmedabad, is required to be modified as per judgement of this court.

ii) The learned City Civil Court judge is requested to consider the case of the plaintiff as well as the defendants since the matter is remanded. Both the plaintiff and the defendants will adduce their additional evidence and thereafter the learned judge is requested to consider the contention of both the parties and decide the matter in accordance with law.

iii) It will be open for the Government to invite tenders by publishing advertisements. However in that case the plaintiff if desires to participate, the plaintiff may fill up the tender form. I am told that the Government has already invited tenders and the plaintiff has already participated. However the Tender Committee will decide the same in accordance with law. The tender Committee will decide the claim of the plaintiff without being influenced by the observations of this court.

iv) I request that the Tender Committee may consider the case of the plaintiff taking into consideration all the aspects and decision of the Tender Committee may be put before the learned judge for record and perusal.

v) I request the learned judge to decide the said matter within seven months from the date of receipt of the judgement of this court.

The First Appeal is disposed of accordingly.

(K.M. MEHTA, J)

(pkn)